Supreme Court, U.S.
FILED

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No.

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in the

Supreme Court Of The United States

October Term 1994

JOSEPH R. CATERINA
AND ALL OTHERS SIMILARLY SITUATED, ET AL.
Petitioners

vs.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES OF PA.; DEPARTMENT OF GENERAL SERVICES OF PA.; GENERAL STATE AUTHORITY OF PA.; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a Corporation of PA.; PA. DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, MCLANE, NEALON, FOLEY & MCDONALD; JOSEPH M. MCDADE; JOHN ORMASA; HILLS OF ARCHBALD; INC., a corporation of PA.; UNKNOWN OWNERS LEO ZINI & MARK ZINI, 528-526 SHORT AVE., PECKVILLE, PA.; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA.; and EDWARD J. GHILARDI; ET AL.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOSEPH R. CATERINA, and ALL OTHERS SIMILARLY SITUATED, ET AL., Pro Se
202 Kenyon Drive, Peckville, PA. 18452
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Dec. 12, 1994

QUESTIONS PRESENTED FOR REVIEW

1) Whether the United States District Court for the Middle District of Pennsylvania had jurisdiction of the case invoked by the Petitioners, alleging damages inflicted upon them by Respondents in violation of the Fourth Amendment of the United States Constitution.

2) Whether the United States District Court for the Middle District of Pennsylvania had jurisdiction of the case invoked by the Petitioners, wherein no Environmental Impact Statement showing no harm would result in a 500% increased watershed to the Petitioners, was ever obtained.

3) Whether the Third Circuit Court of Appeals imposition of sanctions, (penalty requiring the appellant to pay double costs to Respondents) was appropriate or an infringement of the Petitioners' constitutional rights under the circumstances, violative of the Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.

4) Whether the District Court arbitrarily dismissed the case erroneously stating it lacked subject matter jurisdiction.

5) Whether the Court of Appeals, wrongfully upheld the District Court.

6) Whether both the District Court and the Court of Appeals compounded that error by granting double expenses against Petitioners.

7) Whether the Petitioners have a **'Right'** to defend themselves in court from an **'inherent danger'**!

LIST OF PARTIES

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Represents Petitioner:
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Will Represent **Petitioner:**

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Petitioners: All Others Similarly Situated:
Are Not Represented
(See Notice To Court: Page 16)

Atty. Mr. Harry T. Coleman, Esq., Abrahamsen, Moran & Conaboy, 205 N. Washington Ave., W.C. Carter Building, Scranton, PA. 18503, (717) 348-0200, Represents The Following Respondents:

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Lackawanna County Redevelopment Authority, 200 Adams Avenue, Scranton, Pa. 18503

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Attys. Mr. Charles Tiefer, Gen Counsel, Mr. Michael L. Murray Sr. Asst., Mr. Richard P. Stanton Asst. Counsel

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Attys. Mr. Michael J. Daley, Esq., Atty. for General State Authority, Ms. Catherine A. Foley, Esq., Atty. for Dept. Gen Services, Dept. Transportation, Dept. Environmental Resources, 603 North Office Building, Harrisburg, PA. 17125, (717) 787-5599, Represents The Following Respondents:

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Department of General Services Of Pennsylvania, 603 North Office Building, Harrisburg, PA. 17120

Secretary, Department of Transportation of Pennsylvania, Transportation & Safety Bldg., Harrisburg, Pa. 17120

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Atty. Mr. Ernest D. Preate, Esq., Attorney General of Pennsylvania, 16th Floor, Strawberry Square, Harrisburg, PA. 17120, Represents The Following Respondents:

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Attys. Ms. Lois J. Schiffer, Asst. Atty. Gen., Mr. Wayne P. Samuelson, U.S. Atty., Harrisburg, PA., Mr. Robert L. Klarquist and Ms. Joan M. Pepin, Attys. Dept. Justice,Washington, D.C. 20530, Atty., Appellate Section, Environment & Natural Resources Div., U.S. Department of Justice, P.O. Box 23795, L'Enfant Plaza Station, Washington, D.C. 20026, (202) 514-4519, Represents The Following Respondents:

U.S. Dept. of Surface Mining, Wilkes-Barre Region Office, 20 N. Pennsylvania Ave., Suite 3312, Wilkes-Barre, PA. 18701

Secretary of U.S. Dept. Interior, Main Interior Bldg., 849 'C' Street, Washington, D.C. 20240

U.S. Army Corps of Engineers c/o Lt. Gen. Henry J. Hatch, 20 Massachuetts Ave., N.W., Washington, D.C. 20314

United States Attorney, Janet Reno, Rm. 511, 10th & Constitution Ave., N.W., Washington, D.C. 20503

Mr. Drew S. Days III, Solicitor General, U.S. Department of Justice, Washington, D.C. 20530

U.S. Attorney, (M.D. of PA.), U.S. Department of Justice, Federal Building, 228 Walnut Street, Harrisburg, Pa. 17108, Represents The Following Respondents:

United States of America

Office of the Clerk, U.S. Court of Appeals for the Third circuit, 601 Market St., 21400 U.S. Courthouse, Philadelphia, P.A. 19106-1790, (215) 597-4495

Office of the Clerk, U.S. District Court, (M.D. of PA.) P.O. Box 1148, Scranton, PA. 18501, (717) 347-0205;

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2) **The Petitioners have a basic right . . . to be secure in their, persons, houses, papers, and effects, . . . against unreasonable . . . seizures, shall not be violated . . . from an 'inherent danger' newly created by government as it is not reasonable to divert a river in volume knowing that inevitably a catastrophic flood will be created heretofore nonexistent or possible.**
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vs.

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Respondents.

PETITION FOR WRIT OF CERTIORARI

The Petitioners, Joseph R. Caterina and all others similarly situated, et al, respectfully pray that the **Petititon For Writ of Certiorari** be issued to review the judgement order of the United States Court of Appeals for the Third Circuit in **Joseph R. Caterina, and all those similarly situated v. Blakely Borough et al,** No. 93-7565 (3rd Cir. August 18, 1994).

OPINION BELOW

The Court is to review the Order Denying **'Sur Petition For Rehearing'** of the United States Court of Appeals for the Third Circuit, **not dated** (September 14, 1994), is reprinted in the Appendix hereto, at page App. 3, **infra.**

The **'Judgement Order'** of the United States Court of Appeals for the Third Circuit is unpublished, and is reprinted in the Appendix hereto, at page App. 1 & 2, **infra.** Said 'Judgement Order' was without an opinion.

Additionally the Court should review the Order rendered in this proceeding on 22 September 1994, by the U.S. Court of Appeals for the Third Circuit **'Mandate'** to Petitioners to pay double costs as per Order dated 18 August 1994 by said court that also affirmed the District Court's, (M.D. of Pa.), Order of 18 August 1993 and Memorandum-Order of 23 July 1993; said Order is reprinted in the Appendix hereto, at page App. 2, **infra.**

No opinion was rendered by the Court of Appeals for the Third Circuit; last Judgment ORDER:

"Certified as a true copy and issued in lieu of a formal mandate on September 22, 1994." of the "JUDGEMENT ORDER," herein.

Also to review motions denied to the Petitioners by said Third Circuit Court of Appeals dated 18 August 1994 **'Motion by Appellant For Summary Action:** Mansmann C.J.; reprinted in the Appendix on page App. 6, **infra.** and another **'Motion by Appellant Reconsideration clerks Order 12/23/93** along with **Motion by Appellant to Reverse clerk's Order 12/29/93'** as denied January 14, 1994, Becker C.J. reprinted in Appendix on page App. 5, **infra.**

In the United States District Court for the Middle District of

Pennsylvania; last ORDER was dated August 18, 1993. Case No. CV-93-512 (Caldwell, J.), and is reprinted in the Appendix hereto, at page App. 7, 8, 9; **infra.** Said Court issued a prior "MEMORANDUM ORDER" dated July 23, 1993. Case No. CV-93-512 (Caldwell, J.), and is reprinted in the Appendix hereto, at page App. 10, 11, 12 & 13; **infra.**

JURISDICTION

The **Order Denying 'Sur Petition For Rehearing'** of the United States Court of Appeals for the Third Circuit although not dated was rendered on September 14, 1994, and this Petition for Writ of Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

United States Constitution, Fifth Amendment:

"Nor be deprived Life, Liberty, or Property without due process of law."

United States Constitution, Ninth Amendment:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

United States Constitution, Fourteenth Amendment:

"No State Shall make or enforce any law which shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of Life, Liberty or Property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Bill of Rights:

"Rights to Privacy as stated within the 'penumbra' of Specific Guarantees."

National Environmental Policy Act (NEPA)

"Environmental Impact Statement (EIS)", 42 U.S.C. Sections 4321-4370(b) et seq.

Federal Rules of Civil Procedure:

"Fraud Upon the Court", F.R.C.P. Rule 60 (b)

Federal Rules of Appellate Procedure:

"Reply to Response not provided for", F.R.A.P. Rule 28(c).

STATEMENT OF THE CASE

Petitioners invoked jurisdiction of the U.S. District Court, Middle District of Pennsylvania, on the grounds that by altering the normal watershed of the Tinklepaugh Channel the Respondents are placing the Petitioners in an **'inherent danger'** and depriving them of their **'right to be secure'** in their persons, houses, papers and effects. (Fourth Amendment U.S. Constitution).

The Citizens of the Tinklepaugh Channel have always been **'secure in their persons, houses, papers, and effects'**, for over 75 to 100 years, as long as anyone can remember! In this time frame, there has been **nill** periodic flooding with no property damage. The minuscule channel has a **very small capacity**, is about 3,400 feet long or about 5 blocks, has little velocity, and a drainage area of under 200 acres. The channel in Peckville's uptown area has been stable!

The Eynon Creek with a drainage area of a little over 800 acres has been seperate from the Tinklepaugh Channel for over 50 to 75 years, as long as can be remembered and also has **no known** history of flooding or property damage.

The Respondents have decided to alter the long-standing watershed by now dumping the Eynon Creek into the Tinklepaugh Channel under the guise of **'Flood Control'** resulting in about an increase of 500% the normal Tinklepaugh Channel drainage area. **(See Map Exhibit 'A').**

A river in volume will now flow in the Tinklepaugh Channel and all storms over a one hundred year frequency **will not** be contained in the 13 ft. x 8 ft. proposed concrete channel. The present Union Street Tinklepaugh channel is only 5 ft. x 1 ft. **(See Exhibit 'B').** This will result in a 2100% increase in flood waters above the normal in the past resulting in a **'catastrophic flood'** to the Tinklepaugh Residents! **(See Photo).**

No longer will the Petitioners **feel secure** or **be secure in their persons, houses, papers and effects.** It is this constitutional **'right of security'** under the Fourth Amendment that **will be deprived** to the Citizens along the Tinklepaugh Channel **forever!**

At any point in time storms greater than a one-hundred year frequency can happen only now the Petitioners will be flooded **instead of being secure** in their persons, houses, papers, and effects, as is constitutionally guaranteed the Petitioners under a **perspective of protection** of the Fourth Amendment of the Constitution of the United States and the Rights of Privacy in the **'penumbra'** of **specific guarantees** of the Bill of Rights.

This **'inherent danger'**, like a **loaded gun** can go off at any point in time, is being **'Newly'** created by the Respondents and was heretofore nonexistent depriving the Petitioners of **their right to be secure 'forever'!**

No one has ever disclosed the change in the watershed as is proposed to any of the Tinklepaugh Residents and how said altering now places them at **greater risk and danger** during flooding of storms with a frequency of greater than one hundred years and that **no Environmental Impact Statement was obtained.**

This tremendous increase in newly created storm water is being dumped into the Tinklepaugh Channel in a reckless manner with little or no regard for the **potential catastrophe** that will **inevitably** flood uptown Peckville without any substantial risk to either the Respondents or the Residents of the Eynon Creek. This massive diversion of **'newly'** created storm water heretofore not known to the longstanding residents of the Tinklepaugh Channel places said residents in an **'inherent danger'**, meaning at any point in time it can present itself and will henceforth **always be!**

The Eynon Creek drainage (800 Acres) can be diverted directly into the Lackawanna River, above Peckville and eliminate this entire controversy. To date the Courts have failed to honor the Petitioners' **'right to be secure in their persons, houses, papers and effects'** under a **perspective of protection** of the Fourth Amendment of the Constitution of the United States.

ARGUMENT

There are two simple constitutional issues to be decided by the Supreme Court of the United States. They are as follows:

1) "The right . . . . **of Due Process of Law** . . . .", the constitutional right to appeal the decision of the lower court to the next higher court free **from court imposed sanctions.** (penalty requiring appellant to pay double costs to Respondents) Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution (emphasis added)

As unconstitutional as it seems, the Petitioner has had sanctions placed upon him to pay double costs to the Respondents, some of which were **nonappearing** in the district court!

2) "The right of the people . . . . **to be secure** in their persons, houses, papers, and effects, . . ., against **unreasonable** . . . . **seizures**, shall not be violated . . . .";
from an **inherent danger** newly created by government, heretofore nonexistent, as it is **not reasonable** to divert a river in volume into a minuscule channel knowing that inevitably this inherent danger will create a flood catastrophe that would otherwise never **ever** have happened, (absent an EIS).
Fourth Amendment of the U.S. Constitution (emphasis added)

The Petitioners herein find themselves confronted with a situation that **compels** them to question in Court the government's alleged right to place them in **'inherent danger'** of the inevitable catastrophic flood that heretofore never **ever** could have presented itself that now places them in a position of **greater risk and danger unnecessarily?** (inherent danger)

The Petitioners claim that the government has **no right** under any circumstance to do so and claim their **"right to be secure** in their persons, houses, papers and effects . . ." under a

perspective of protection of the Fourth Amendment of the U.S. Constituton.

The United States District Court for the Middle District of Pennsylvania has failed to invoke Jurisdiction, because the Court itself suppressed the perspective of Fourth Amendment protection of the U.S. Constitution contrary to the relief sought by the Petitioners herein, (supra);

> "That the Court give the Citizens of the Tinklepaugh Creek **all** of their Inherent Powers and Rights . . . as are enumerated in the **Fourth**, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution". cite: Addendum to Complaint 19 Apr 93; Docket Entry 2, 24a (emphasis added)

It should be noted that both the Appellate and District Courts were indifferent to the granting of relief under the perspective of protection of the Fourth Amendment and the full measure of all other rights despite the **'inherent danger'** to the Petitioners!

Additionally! said Courts attempted to usurp the Petitioners **right to appeal** under the 'Due Process of Law' clause of the U.S. Constitution, First by:

> "5. It is certified that any appeal from this order is frivolous, is not taken in good faith, and is lacking in probable cause."
> Dist. Ct. (M.D. PA.), Order 18 Aug. 1993, p.4, par 5

and Second by:

> ". . . ., it is hereby ORDERED that the appellant shall pay double costs on this appeal."
> 3rd Ct. Court of Appeals, Order 22 Sept 94 p. 2, last paragraph

The Petitioners put the District Court on notice of the lack of the government's failure to have an **Environmental Impact Statement** as follows:

> "28 . . . they have now endangered the health, property, safety and general welfare of the entire uptown community and place their homes at greater risk and danger as a means in which to accomplish their ends. **All this has been accomplished without an Environmental Impact Statement.**" (emphasis added)
> Complaint, 8 Apr 93, p. 9 14a, para 28.

and requested relief as follows:

> "9) **That the Court Order than an Environmental Impact Statement be prepared** . . . . for the Tinklepaugh Creek drainage Basin at the expense of the Defendants." (emphasis added)
> Complaint, 8 Apr 93, p.11 16a, Wherefore: para 9).

The Environmental Impact Statement (EIS) is a creation of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370 (b). As far as is known by the Petitioners this is **Federal Law**, yet the District Court Judge states:

> "1. All Defendants except the Lackawanna County Sheriff's Office are **dismissed for lack of subject matter jurisdiction.**" (emphasis added)
> Dist Ct. (M.D. PA.) Order 23 July 93, p.1 33a, para 1

and:

> "1. Plaintiff now suggests that his pleadings raise issues under 42 U.S.C. §§ 1983, 1985, and 1986. As we previously indicated, these statutes serve only as vehicles for lawsuits to vindicate **other constitutional** or **statutory rights**. Plaintiff has **failed to indicate** any **federal law** or **constitutional provision** that might be **implicated.**" (emphasis added)
> Dist Ct. (M.D. PA.) Order 18 Aug 93, p. 3 3a footnote 1.

and further:

> "On August 10, 1993, Plaintiff filed a motion for sum-

mary judgment and an accompanying brief. As we have determined that we may not exercise **subject matter jurisdiction** over this case, we will dismiss the motion as moot.
AND NOW, this 18th day of August, 1993, it is ordered that: 1. The complaint is dismissed for **lack of subject matter jurisdiction."** (emphasis added)
Dist Ct. (M.D. PA.) Order 18 Aug 93, p 3 3a & 4 4a, last para and item 1. Order

It should be noted that both the Appellate and District Courts were indifferent to the granting of relief under **Federal Question and subject matter jurisdiction** to the Petitioners?

Because of the hereinabove foregoing reasons, the case has probable cause and is not frivolous and does not lack **subject matter jurisdiction.**

It is significant and material to note that Respondents made no effort to oppose the material facts in the Complaint and Addendums or facts asserted in the other documents filed in the District Court. None of the defendants addressed or refuted any of those facts. They are therefore deemed admitted . The pleadings showed that there was no genuine issue to any material fact and that the Petitioners were entitled to a judgment as a matter of law.

Once again, both the Appellate and District Courts denied the Motion for summary Judgment as follows:

> " AND NOW, this 18th day of August, 1993, it is ordered that:
>
> 3. The motion for summary judgment is denied."
> Dist Ct. (M.D. PA.) Order 18 Aug 93, p 4 4a, Order para 3

and:

> " Motion by Appellant for Summary Action. The foregoing motion is denied."
> 3rd Ct. Court of Appeals, Order 18 Aug 94 by

Mansmann C.J.

However! nonappearing Federal Respondents at the appellate level attempted to argue the case they chose not to litigate in the district court setting a very bad precedent by the inclusion of documents' into the record **not** previously filed in the district court record. Petitioners made a motion to strike the documents but were **denied,** even after reconsideration as follows:

> " 1 . . . . Motion to Review the Clerk's order 12/23/93 Order.", and
> 2 . . . Motion to Reverse clerk's order 12/29/93 . ."
> 3rd Ct. Court of Appeals, Order 14 Jan 94 by Becker C.J. **"Motions are denied".**

The Appellate Court denied the Petitioners' a **'fundamental'** precedent of **'Due Process and Equal Protection of the Law'** as is secured by the Fifth and Fourteenth Amendments of the U.S. Constitution. This entire progression of constitutional deprivation seems to run rampant in this case. The foregoing has been nothing but a litany of constitutional errors as subjugated by the courts.

The entire contents of all the Petitioners' pleadings are replete invocations and supplications emphasizing the enormity of the specific material **Fourth Amendment** and **Federal law violations** of the Petitioners.

No longer will the Petitioners **be secure** or **feel secure** in their persons, houses, papers and effects. It is this constitutional quest for the **'right of security'** under the **Fourth Amendment** and the Rights of Privacy in the **'penumbra'** of specific guarantees in the Bill of Rights that will be deprived to the Petitioners **'forever'.**

In the face of an **'inherent danger'** what else can the Petitioners do to **illuminate** the courts of the **justness** of their cause and the merits of their case. There are no sanctions great enough to bar the Petitioners from trying to secure their **'right**

Foot Note ' – Reply to response not provided for F.R.A.P. Rule 28(c), to Petitioners.

to **be secure'** in their person, houses, papers, and effects from a catastrophic flood heretofore nonexistent in their area of abode. And to have sanctions placed upon them to pay double costs to the Respondents is **'outrageous'.**[3]

Foot Note [3] – Respondents Have Unclean Hands (see Pages 4 And App. 4); F.R.C.P. Rule 60(b) "Fraud[s] Upon The Court".

SUMMARY

In light of the pending **'inherent danger'**, Citizens such as the Petitioner, a registered **professional Civil Engineer**, would be **remise** in not taking every effort to overt an inevitable flood catastrophe and it is therefore the **duty of the Supreme Court** of the United States to immediately remove any built-in **coercement** or other **intimidation mechanisms** that presently exist in the court system whose **'sole'** function it is to **impede** and **prevent;** in a perverted manner so as to shame the so-called sacred halls of justice; Citizens from securing their **legitimate rights and privileges** under the Constitution of the United States impairing them with a **'chilling affect'** that scars their memory forever! To **deny** and **discourage** rather than **grant** and **encourage** by placing sanctions of double costs to the Respondents, (the creators of this mess), is just **appalling!**

It is also the duty of the Supreme Court of the United States, **a constitutional court**, to secure the Petitioners and the Citizens **"right to be secure in their persons, houses, papers, and effects . . ."** (Fourth Amendment of the U.S. Constitution), from a **perspective of protection** under the **Fourth Amendment** of the U.S. Constitution appropriate to the circumstances as created by government that has placed the Petitioners and other Citizens in **'inherent danger'**, WHEREIN HERETOFORE said **'inherent danger'** was **nonexistent** and would never **ever** have presented itself; as there is **no bar** preventing the Supreme Court of the United States from doing so!

THE REASONS FOR GRANTING THE WRIT

1) The Petitioners have a basic right . . . **of Due Process and Equal Protection of the Law** . . . to appeal the decision of a lower court to the next higher court free from court imposed sanctions requiring the Petitioner to pay double costs to the Respondents.
violative of the Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution.

2) The Petitioners have a basic right . . . **to be secure** in their persons, houses, papers, and effects, . . . against **unreasonable** . . . . seizures, shall not be violated . . . from an **'inherent danger'** newly created by government as it is **not reasonable** to divert a river in volume knowing that inevitably a catastrophic flood will be created heretofore **nonexistent or possible.**
violative of the Rights of Privacy of the **'penumbra'** of **'specific guarantees'** of the Bill of Rights and a **perspective of protection** of the Fourth Amendment of U.S. Constitution.

CONCLUSION

In the instant case, the Court of **First Jurisdiction** was attempting to become the Court of **Final** Jurisdiction by **usurpation** of the Petitioners' constitutional right of **'Due Process and Equal Protection of the Law'** and his **'right to appeal'** the decision of a lower Court to the next higher Court.

The Courts should have **no authority** to sanction a litigent who is trying to secure his **legitimate rights and privileges** under the Constitution of the United States by **'denying'** and **'disparaging'** their rights with a type of **built-in systematic Court conspiracy** that penalizes and frustrates the Petitioners constitutional endeavor, especially in a **free society** such as ours. The Supreme Court of the United States has a **legal duty** as **high protectorate** of the Constitution of the United States to remove any **mechanisms** of **coercement and intimidation,** such as exposed itself like the tip of an iceberg in the instant case, from the entire Court System under their jurisdiction, immediately, forthwith, without delay for this issue **alone** is of **'vast public import'**, as **'a nation can be no greater or lessor than its ' Courts'!**

The Government has **no authority** to place either the Citizens or the Petitioners in an **'inherent danger',** involuntarily against their consent or will in the absence of a crime, war or

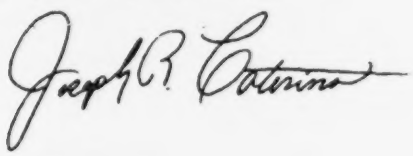
a national emergency none of which are present in this scenario; and the Citizens have a basic constitutional **'Right'** . . . . **to be secure** in their persons, houses, papers, and effects . . from an **'inherent danger'** created by government heretofore that was **non-existent** nor would have **ever** presented itself, but for and by the intervention of government!

Should the Supreme Court of the United States grant this **Petition For Writ of Certiorari**, then as Abraham Lincoln so simply stated, **"to sin by silence when they should protest makes cowards of men"**, even if such persons are justices of the highest court in the land; will not be true.

Finally, "It is **not** the function of our Government to keep the citizens from falling into error; it **is** the function of the citizen to keep the government from falling into error." (**American Communications Association v. Douds,** U.S. Sup Ct., 339 U.S. 382, 442)

I thank the Court and their Staff for any consideration that **can be given** to my constitutional plight and I apologize that I was unable to restrict my argument to two pages as intended for I lack the professional skills necessary to do so.

Respectfully submitted,



Joseph R. Caterina, et al
and all others similarly situated
202 Kenyon Drive, Peckville, PA 18452
Phone (717) 489-8741 home
489-6883office
348-5167pager

P.S. Note to Court:
Should the Court grant the Petition For Writ of Certiorari to

the United States Court of Appeals for the Third Circuit the Petitioners herein will be represented by:

DAVID L. KURTS, ESQ., Attorney-at-Law
Offices: P.O. Box 107 F, R.D. 4, Lake Ariel, PA 18436
(717) 689-9840
ATTY. I.D. #16289

Attorney David L. KURTS is a member of the Bar and has presented oral argument in the United States Supreme Court on other past cases. (Pro Hac Vice)

Date: December 12, 1994

Notice to the Court:
FOR INFORMATION ONLY:

A whole class of citizens, (fifty of which are property owners adjacent to the Tinklepaugh Channel), and hundreds of other residents and property owners between the present Tinklepaugh Channel and approximate Main Street Area have no notice or knowledge of this litigation that will directly affect them.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA, and all those similarly situated

v.

BLAKELY BOROUGH; ARCHBALD BOROUGH; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY, LACKAWANNA COUNTY; DEPARTMENT OF ENVIRONMENTAL RESOURCES; DEPARTMENT OF GENERAL SERVICES OF PA; GENERAL STATE AUTHORITY OF PA; LACKAWANNA COUNTY SHERIFF'S OFFICE; UNITED STATES ARMY CORPS OF ENGINEERS; U.S. DEPARTMENT OF INTERIOR; CECO ASSOCIATES, INC., a corporation of PA; PA DEPARTMENT OF TRANSPORTATION; THE LAW FIRM OF FOLEY, FOLEY, COGNETTI AND COWLEY; JOHN ORMASA; JOSEPH M. MCDADE; HILLS OF ARCHBALD, INC., A corporation of PA; EDWARD J. GHILARDI; LEO ZINI, Unknown Owners, 528-526 Short Ave., Peckville; MARK ZINI, Unknown Owners, 528-526 Short Ave., Peckville; THE LAW FIRM OF FOLEY, MCLANE, NEALON FOLEY & MCDONALD; U.S. DEPARTMENT OF SURFACE MINING IN N.E. PA; UNKNOWN OWNER, 528-526 SHORT AVE., PECKVILLE

JOSEPH R. CATERINA, and all others similarly situated,

Appellant

Appeals from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. No. 93-00512)
District Judge: Honorable William W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
July 29, 1994
Before: MANSMANN, HUTCHINSON
and LEWIS, **Circuit Judges.**

JUDGEMENT ORDER

After consideration of all contentions raised by the appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Pursuant to Fed. R. App. P. 38, it is hereby ORDERED that the appellant shall pay double costs on this appeal.

BY THE COURT,
CAROL LOIS MANSMANN, Circuit Judge

Attest:
BRADFORD A. BALDUS,
Chief Deputy Clerk
Dated: August 18, 1994

Double Costs taxed in favor of Departments of General Services, Environmental Resource & Transportation & General State Auth. as follows:

Total for Brief	$355.20
Total	$355.20

Double Costs taxed in favor of Blakely Borough, et al. as follows:

Total for Brief	$171.50
Total	$171.50

Double Costs taxed in favor of Lackawanna County Redevelopment Authority, Lackawanna County and Sheriff's Office, Foley, McLane, Nealon, Foley & McDonald, P.C. as follows:

Total for Brief	$262.40
Total	$262.40

Double Costs taxed in favor of Hills of Archbald, Inc. and Leo and Marc Zini as follows:

Total for Brief	$348.80
Total	$348.80

Certified as a true copy and issued in lieu
of a formal mandate on September 22, 1994.
Teste: P. DOUGLAS SINK
Clerk, U.S. Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA, etc.
vs.
BLAKELY BOROUGH; et al.

SUR PETITION FOR REHEARING

Present: SOLIVITER, **Chief Judge,**
BECKER, STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO,
ROTH, LEWIS and MCKEE, **Circuit Judges.**

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,
CAROL LOIS MANSMANN
Circuit Judge

(September 14, 1994)
'No Date On order'

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC))

Present: MANSMANN, HUTCHINSON and LEWIS,
CIRCUIT JUDGES

Notice by Appellant to the United States Court of Appeals of Additional Fraud.

ANTHONY INFANTE, 597-3137
Deputy Clerk

Listed for Disposition: 7/29/94

ORDER

The foregoing "Notice" shall be filed by the clerk for the information of the court.

By the Court,
CAROL LOIS MANSMANN,
Circuit Judge

Dated: August 18, 1994

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC))

Present: BECKER, **Circuit Judge.**

1. Motion by Appellant Pro Se entitled "Plaintiffs' Motion to the Court for Reconsideration of the Clerk's Order. Dated 12/23/93", which the Court may wish to treat as a Motion to Review the Clerk's 12/23/93 Order.

2. Motion by Appellant Pro Se entitled "Plaintiffs' Motion to the Court to Reverse Clerk's Order, dated 12/29/93", which the Court may wish to treat as a Motion to Review the Clerk's 12/29/93 Order.

For the Court's information, the above mentioned orders and all associated documents and the docket entries are attached.

ANTHONY INFANTE 597-3137
Deputy Clerk

Case Fully Briefed.

ORDER

The foregoing motions are denied.

By the Court,
JAMES R. BECKER,
Circuit Judge

Dated: January 14, 1994

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-7565

JOSEPH R. CATERINA
v.
BLAKELY BOROUGH, et al.
JOSEPH R. CATERINA, Appellant
(M.D. (Harrisburg) of Pa. Civil No. 93-00512 (WWC))

Present: MANSMANN, HUTCHINSON and LEWIS,
CIRCUIT JUDGES

Motion by Appellant for Summary Action.

ANTHONY INFANTE 597-3137
Deputy Clerk

Listed for Disposition: 7/29/94

ORDER

The foregoing motion is denied.

By the Court,
CAROL LOIS MANSMANN
Circuit Judge

Dated: August 18, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, and all others similarly situated, Plaintiff vs. BLAKELY BOROUGH, et al., Defendants	CIVIL ACTION NO. 3: CV-93-512

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS

We are considering Plaintiff's response to our order to show cause why his complaint against the Lackawanna County, Pennsylvania, Sheriff's office should not be dismissed for lack of subject matter jurisdiction, Plaintiff's motion for summary judgment, and Plaintiff's motion for reconsideration.

Plaintiff has filed a thorough description of the events of which he complains. Apparently, a representative of the Sheriff's office came to Plaintiff's business on the afternoon of March 6, 1993, to serve Plaintiff with papers having to do with property condemnation. Plaintiff alleges that the server "burst" into the office, "bang[ed] a heavy object on the front office desk." Plaintiff asserts that the man shouted repeatedly, asking where he could find Joseph Caterina. Plaintiff identified himself and produced a pre-addressed mailing envelope with which he intended to immediately send back the service papers. When Plaintiff informed the Sheriff's representative of his intention to mail back the papers, the man opened the envelope and looked through the papers. Plaintiff asserts that the man then took several of the papers and left, loudly repeating, "I don't care." Plaintiff, meanwhile, sealed the remainder of the papers in his pre-addressed envelope and deposited it in a mailbox. Plaintiff complains that there was a potential client speaking with him at the time of the "visit" and that she left immediately afterward and has not returned. He further notes that several of his neigh-

bors watched the confrontation from their porches.

From these events, Plaintiff argues the Sheriff's office violated his rights under the Fourth Amendment to the United States Constitution. We disagree.

> **"The Fourth Amendment holds as follows: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ."**

The United States Supreme Court has indicated that **Fourth Amendment protection extends to places in which a citizen has a reasonable expectation of privacy. Katz v. United States, 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967).** Plaintiff here claims that an officer entered his place of business which, given Plaintiff's description, is a place open for prospective clients. We do not find that the entrance into Plaintiff's business of a representative of the Sheriff's office amounts to a Fourth Amendment violation given that Plaintiff enjoyed no reasonable expectation of privacy there. We realize that Plaintiff complains not merely about the entry but about the conduct of the man; nevertheless, the Fourth Amendment is not addressed to such a concern.

The other allegation Plaintiff offers is that the man opened an envelope addressed to Plaintiff and looked at the papers therein. Again, there is no Fourth Amendment implication here. Plaintiff had clearly refused to accept the papers and had indicated that he would mail them back to the sender immediately. **The Fourth Amendment protects the rights of citizens "to be secure in their persons, houses, papers, and effects;"** the papers were never the property of Plaintiff as he clearly refused to accept them. Even if they were Plaintiff's property, we would conclude that the opening of the envelope under the circumstances did not amount to a constitutional violation.

Thus, we conclude that the complaint does not implicate a **federal right** and that, therefore, **we do not have subject matter jurisdiction.**[1]

On August 10, 1993, Plaintiff filed a motion for summary

judgment and an accompanying brief. As we have determined that we may not exercise **subject matter jurisdiction** over this case. we will dismiss the motion as moot.

[1] Plaintiff now suggests that his pleadings raise issues under 42 U.S.C. §§ 1983, 1985, and 1986. As we previously indicated, these statues **serve only as vehicles for lawsuits to vindicate other constitutional or statutory rights.** Plaintiff has failed to indicate **any** federal law or **constitutional** provision that **might be "implicated."**

AND NOW, this 18th day of August, 1993, it is ordered that:

1. The complaint is dismissed for lack of subject matter jurisdiction.
2. The Motion to Make Complaint Conform to Plaintiff's Pleadings is dismissed as moot.
3. The motion for summary judgment is denied.
4. The motion for reconsideration is denied.
5. It is certified that any appeal from this order is frivolous, is not taken in good faith, and is lacking in probable cause.
6. The clerk of Court shall close this file.

WILLIAM W. CALDWELL
United States District Judge

LANCE S. WILSON,
Deputy Clerk

Dated: August 18, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, and all others similarly situated, Plaintiff vs. BLAKELY BOROUGH, et al., Defendants	CIVIL ACTION NO. 3: CV-93-512

MEMORANDUM

Pending are eight motions to dismiss filed by various Defendants. They are now ripe for disposition.

I. Facts

This lawsuit arises from a flood control plan developed by the Pennsylvania Department of Environmental Resources for Blakely Borough, Pennsylvania. Part of the plan calls for the Commonwealth to acquire land by eminent domain. 26 Pa. Cons. Stat. §§ 1-101, **et seq.** (Purdon 1958 and supp. 1993). Plaintiff is a landowner along the Tinklepaugh Creek whose property has been condemned in order to construct portions of the flood control project. He proceeds **pro se** and alleges improprieties by some twenty defendants, who include two boroughs; Lackawanna County, Pennsylvania, and its Redevelopment Authority and sheriff's office; four agencies of the Commonwealth of Pennsylvania; the United States Army Corps of Engineers and the United States Department of the Interior; the Hon. Joseph M. McDade of the United States House of Representatives and a member of his staff; a local mining company; an engineering firm that has apparently consulted on the flood control plan; and the president of the Blakely Borough Council.

The eight pending motions to dismiss are predicated on Fed. R. Civ. P. 12(b) (1) and 12(b) (6).

II. Law and Discussion

United States district courts have limited jurisdiction, being confined generally to cases arising under the laws or Constitution of the United States, 28 U.S.C. § 1331, or that arise under state law where there is diversity of citizenship among the litigants. 28 U.S.C. § 1332. Because of this limited jurisdiction, a district court has a well-established duty to insure that it acts only when it has jurisdiction over the subject matter. **Employers Insurance of Wausau v. Crown Cork & Seal Co.**, 905 F.2d 42, 45 (3d cir. 1990).

Diversity of citizenship is governed by 28 U.S.C. § 1332 and requires "complete diversity." **Strawbridge v. Curtiss**, 7 U.S. 267 ((1806). This means that no defendant can be a citizen of the same state as any plaintiff. **Id.** Plaintiff in the instant case does not deny that certain of the Defendants are, as he is, citizens of Pennsylvania. Rather, he points to those Defendants who are not, apparently presuming that diversity is satisfied so who are not, apparently presuming that diversity is satisfied so long as at least one of the Defendants is not a Pennsylvania citizen. As noted, this is not the case and there is no diversity here.

The second possible source for federal jurisdiction is our federal question jurisdiction, in which the case or controversy arises from the laws of Constitution of the United States. 28 U.S.C. § 1331.

We have carefully reviewed Plaintiff's complaint and the two addenda to it. We find only two references that could arguably implicate federal questions. We will discuss them in turn.

In the third paragraph, Plaintiff refers to a "taking" of property and asserts that

> [c] itizens are not being compensated for the increased risk and probability of flooding with a storm frequency of greater than a 100 year storm that will inevitably present itself . . .

It is true that private property may not be taken for public use without just compensation. U.S. Const. amend. V. We perceive Plaintiff as alleging two sorts of taking, one of his property by eminent domain and one of his neighbors' property by

eventual flooding should the proposed plan have an adverse effect.[1]

Plaintiff has not asserted an unconstitutional taking regarding the eminent domain proceedings against his property. The Fifth Amendment only prohibits taking without just compensation. The Pennsylvania eminent domain law requires compensation. 26 Pa. Cons. Stat. § 1-407 (Purdon 1958 and supp. 1993). Plaintiff has not alleged that the condemning authorities have failed to offer him compensation or that such compensation is unjust.

The second takings claim regards the potential for flooding. We note, first, that such a suggestion is purely speculative. Second, periodic flooding of property does not state a claim under the Takings Clause of the Fifth Amendment. Cox v. Tennessee Valley Authority, No. 92-5641, 1993 U.S. App. LEXIS 5875 at *11 (3d Cir. March 15, 1993). Plaintiff has not suggested that the danger he alleges is that private property would be permanently submerged. Id. Hence, we do not find that there is a federal question concerning the Fifth Amendment.

The other implication of federal constitutional rights is in paragraph 26, in which Plaintiff charges that a representative of the Lackawanna County sheriff's Office conducted an unreasonable seach and seizure of his property, in violation of the Fourth Amendment. Plaintiff does not, however, more fully explain this allegation. If the visit to Plaintiff's residence was merely to deliver a summons or condemnation notice, we perceive no search or seizure. However, we believe this accusation is in need of further explanation before we assume it to be meritless.

In conclusion, with the exception of the Fourth Amendment charge against the Lackawanna County Sheriff's Office, we believe it is clear that we may not exercise jurisdiction over this case. We will, therefore, dismiss all Defendants except the Sheriff's Office and we will require Plaintiff to show cause within 20 days why we should not dismiss the Sheriff's Office for lack of subject matter jurisdiction.

WILLIAM W. CALDWELL
United States District Judge

Date: July 23, 1993

[1] It should be noted that Plaintiff includes as co-plaintiffs "all other similarly situated" although he does not name them. We presume that he means his neighbors and others who live along the creek.

[2] Because we have questioned the issue of subject matter jurisdiction sua sponte, we will not delve into which specific Defendants have filed motions for dismissal.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, and all others similarly situated, Plaintiff vs. BLAKELY BOROUGH, et al., Defendants	CIVIL ACTION NO. 3: CV-93-512

ORDER

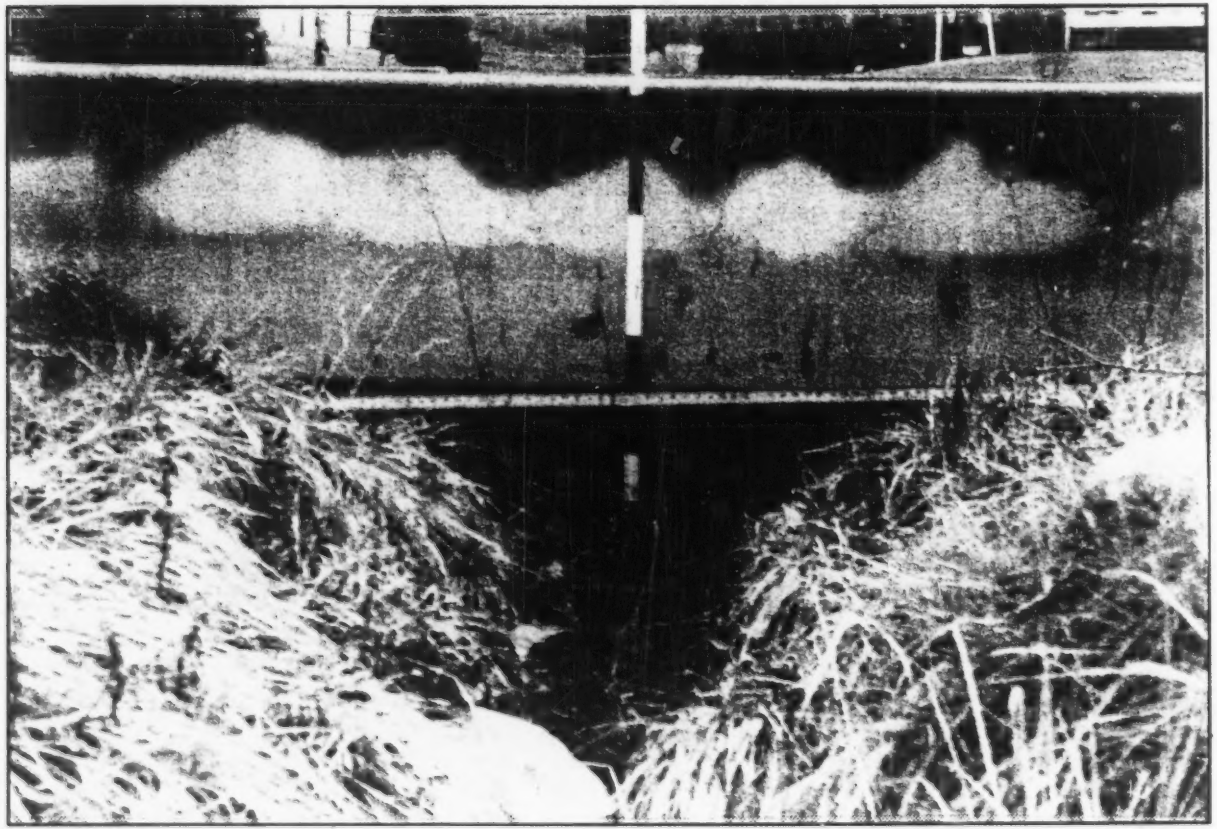
AND NOW, this 23rd day of July, 1993, it is ordered that:

1. All Defendants except the Lackawanna County Sheriff's Office are dismissed for lack of subject matter jurisdiction.
2. Plaintiff shall show cause on or before August 9, 1993, why the complaint should not be dismissed as against the Lackawanna County Sheriff's Office for lack of subject matter jurisdiction.
3. The motion of defendant McDade to amend the summons is dismissed as moot.

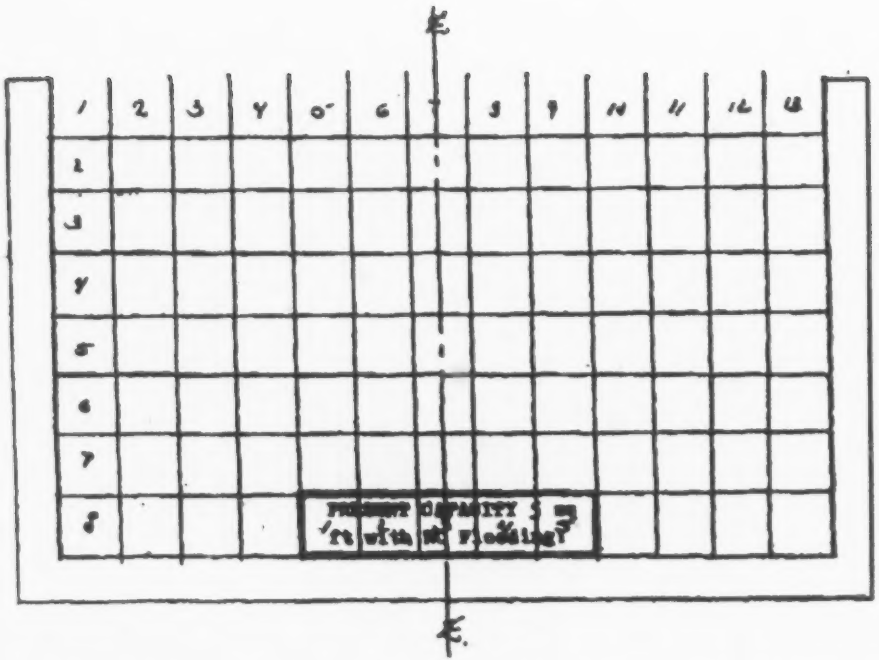
WILLIAM W. CALDWELL
United States District Judge

LANCE S. WILSON
Clerk

Date: July 23, 1993



PRESENT TINKLEPAUGH CHANNEL AT UNION STREET
5 feet wide x 1 foot deep
(the capacity less than 5 sq. ft.)
Sta 34+00 (mile .63)



(App. 15)

STA 34+00 **PRESENT** UNION STREET CAPACITY **(5 sq. ft.)** .63 Mile Point

AS COMPARED TO

PROPOSED 13ft. x 8 ft. CHANNEL (104 sq. ft.)

NEW CAPACITY **2100% increase**

TWENTY-ONE TIMES MORE FLOOD WATER TO PROTECT A STREAM THAT HAS NO HISTORY OF FLOODING

EXHIBIT 'B'

EXHIBIT 'A' MAP
ATTACHED TO THIS PAGE

EXPLANATION:

This map shows the normal longstanding Tinklepaugh Watershed as has been known by the residents for their entire life time. (For over 50 to 75 years as long as any living resident can remember) this Watershed has been a drainage basin under 200 acres ±.

The Tinklepaugh Channel is so marked and runs from just **South of Keystone Avenue** and just **North of Union Street** and natural **Ponding Areas 'A' and 'E'** are a part of the long-standing drainage basin.

A class of hundreds of residents and property owners fall within **this 200 acres** who **are not represented** in this case and who will be directly affected by the outcome. (Area between Tinklepaugh Creek and Main Street)

Also shown is the Eynon Creek Drainage Basin, (a little over 800 acres ± Watershed); the Eynon Creek has been seperate from the Tinklepaugh Creek for over 75 years as long as can be remembered. (Natural and man-made ponding **areas 'B', 'C', 'D', 'F', 'G', 'H', 'I', 'J', 'K'** and a **part of 'L'** all fall within this longstanding drainage basin)

This massive diversion of newly created storm water can be diverted directly into the Lackawanna River above Peckville as is so indicated on the **Map Exhibit 'A'** (an 800 foot underground 10'x10' reinforced precast concrete box channel).

NATURAL PONDING AREAS
LONG STANDING
EYNON CREEK BASIN and
TINKLEPAUGH CHANNEL BASIN

Eynon Creek 800 Acres ±

Prospect Hill 200 Acres ±

Tinklepaugh Creek 200 Acres ±

Eynon Creek

Possible Diversion Directly Into Lackawanna River Above Peckville

Lackawanna River

Peckville

Blakely High Sch

Peckville Sch

Forest Cem

Strip Mine

Sub Station

RIVER

EXHIBIT 'A'

(App. 16)